IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.836 OF 2005
IN
APPEAL NO.159 OF 2005
IN
SUIT NO.603 OF 1981

Fatemabai A. Dahodwala Appellant

versus

Bai Asma Moiz Matcheswala & ors. Respondents

A.N.Maniar for appellant.

H.J.Thakkar, Sr.Counsel i/by Desai & Diwanji for respondents 2 and 3.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 30th March 2005

PC :

1. Heard Mr.Maniyar in support of this motion which seeks condonation of delay of 108 days in filing the appeal. The submission of appellant is that application was made to the office for furnishing certified copy of the judgement and order dated 5-6th August 2004. That application was made on 10th August 2004. A photocopy of the receipt given by the office is annexed as Exhibit-A to the rejoinder. The receipt shows

that an amount of Rs.100/- is received from the learned advocate for the appellant being a deposit for the certified copy. The copy is received much letter on 10th December 2004. The appeal should have been filed within 30 days thereafter and there is delay of 108 days which is sought to be explained by supporting affidavit. Mr.Thakkar, learned Sr.Counsel appearing for respondents 2 and 3 submits that if such an application was made 10th August 2004, the same ought to have been produced. The endorsement on the certified copy which is annexed to the appeal memo shows that the application was made on 4th November 2004. Therefore, reliance is placed on a judgement of Division Bench of Calcutta High Court in United Commercial Bank Vs. M.C.Shaw Bonded Warehouse and others reported in AIR-1985-Calcutta-445 to submit that if application itself was made beyond the expiry of the period of limitation the appellant is not entitled for condonation of delay.

2. Mr.Maniyar on the other hand points out that the receipt clearly shows that the application was made earlier. The subsequent application appears to have been made since copy was not

received and certain typographical errors were corrected by the learned Judge in the mean while. We accept this explanation as also explanation given in the supporting affidavit for condoning the delay of 108 days. Accordingly this motion is granted in terms of prayer clause (a). Motion disposed of.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)